

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>LUV N' CARE, LTD. and</b>	)	
<b>ADMAR INTERNATIONAL, INC.</b>	)	
	)	
<b>Plaintiffs,</b>	)	CIVIL ACTION NO.
<b>v.</b>	)	
	)	08 CIV 4457 (DC/HP)
<b>WALGREEN CO. and</b>	)	
<b>KMART CORP.</b>	)	
	)	JURY TRIAL DEMANDED
<b>Defendants.</b>	)	
_____	)	

**DECLARATION OF TODD M. MALYNN**

I, TODD M. MALYNN, being of full age, hereby certify and declare as follows:

1. I am an attorney for Plaintiffs Luv n' care, Ltd. and Admar International, Inc., in the above-referenced matter, and am partner at Feldman Gale, P.A., 880 West First Street, Suite 315, Los Angeles, California 90012. I am a member in good standing of the California Bar. I have personal knowledge of the facts contained in this Declaration.

2. Attached as Exhibit "1" is a correct copy of my June 19, 2009 email to Jason Buratti and other counsel. This email confirmed counsels' telephone conference concerning, among other things, Plaintiffs' motion to compel the completion of Walgreen's 30(b)(6) deposition and Walgreen's production of documents.

3. Attached as Exhibit "2" is a correct copy of my June 23, 2009 email to Jason Buratti and other counsel. This follow-up email, per Mr. Buratti's request, confirms in writing the parties' discussion and Plaintiffs' position on the parties' proposed resolution of discovery issues, including Walgreen's 30(b)(6) deposition, production of documents and responses to written discovery, and third-party discovery related to Atico International USA, Inc.

*Luv N' Care, Ltd. v. Walgreen Co.*  
Civil Action No. 08 CIV 4457 (DC/HP)

4. Attached as Exhibit "3" is a correct copy of my June 26, 2009 email to Jason Buratti and other counsel responding to Mr. Buratti's June 26, 2009 email. Mr. Buratti's June 26, 2009 email, embedded in the string, responded to my June 23<sup>rd</sup> email. The two emails confirmed Walgreen's acknowledgement that it did not, and still needed to, fulfill its obligations under Rule 30(b)(6), and that to fulfill its obligations of producing a witness with knowledge, Walgreen's proposed a deposition date, and contemplated designating two additional witnesses. As to Walgreen's document production, responses to written discovery, and third-party discovery on its in-house supplier, the parties confirmed their positions and impasse.

5. Attached as Exhibit "4" is a correct copy of Mr. Buratti's June 26, 2009 email to me responding to my email of the same date.

6. Attached as Exhibit "5" is a correct copy of my May 18, 2009 email to Jason Buratti, wherein I tried to confirm an available date for Walgreen's deposition of Dr. Bruce Isaacson.

7. Attached as Exhibit "6" is a correct copy of the USPTO Certificate of Registration no. 3,303,259 for Walgreen's "WAGI" mark.

8. Attached as Exhibit "7" are correct copies of excerpts from the deposition transcripts of Jeffrey T. Kruckman, who was designated by Walgreen as a Rule 30(b)(6) witness.

9. I have reviewed an electronic copy of the deposition transcripts of Mr. Kruckman, who testified in his individual capacity and as a designated person with knowledge of topics listed in Plaintiffs' Rule 30(b)(6) deposition notice served upon Walgreen.

*Luv N' Care, Ltd. v. Walgreen Co.*  
Civil Action No. 08 CIV 4457 (DC/HP)

10. As part of my review of Mr. Kruckman's deposition testimony, I caused a computer to search for phrases, such as "I don't know," "I don't recall," and "I don't remember." The results of the search were that Mr. Kruckman answered "I don't know" over 350 times, and "I don't recall" (or remember) over 90 times, for a total of over 440 non-responsive answers.

I hereby certify and affirm that all of the facts herein are true based upon my personal knowledge, or are believed to be true to the best of my knowledge, and certifying the truth of these statements under penalty of perjury.

Dated: June 29, 2009

/s/ Todd M. Malynn  
TODD M. MALYNN  
*Counsel for Plaintiffs*  
Feldman Gale, P.A.  
880 West First Street, Suite 315  
Los Angeles, California 90012

*Luv N' Care, Ltd. v. Walgreen Co.*  
Civil Action No. 08 CIV 4457 (DC/HP)

**CERTIFICATE OF SERVICE**

I HEREBY certify that on this 29<sup>th</sup> day of June 2009, I electronically filed the foregoing document with the Clerk of the Court using its CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified either via transmission of Notices of Electronic Filing generated by this Court's CM/ECF system or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Susan J. Latham  
SUSAN J. LATHAM

**SERVICE LIST**

*Luv N' Care, Ltd., et al. v. Walgreen Co., et al.*  
Case No. 08-civ-4457 (DC)  
United States District Court, Southern District of New York

Alan Weisberg  
[aweisberg@cwiplaw.com](mailto:aweisberg@cwiplaw.com)  
Jason Buratti  
[jburatti@cwiplaw.com](mailto:jburatti@cwiplaw.com)  
Jeffrey H. Kamenetsky  
[jkamenetsky@cwiplaw.com](mailto:jkamenetsky@cwiplaw.com)  
Christopher & Weisberg, P.A.  
200 East Las Olas Blvd., Suite 2040  
Ft. Lauderdale, FL 33301  
Phone: 954-828-1488  
Facsimile: 954-828-9122  
*Via CM/ECF.*